

SERVED: March 19, 2004

NTSB Order No. EM-197

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 18th day of March, 2004

_____)	
THOMAS H. COLLINS,)	
Commandant,)	
United States Coast Guard,)	
)	
)	
v.)	Docket ME-174
)	
)	
THOMAS W. VILAS,)	
)	
Appellant.)	
_____)	

OPINION AND ORDER

Appellant, by counsel, seeks review of a decision of the Vice Commandant (Appeal No. 2628, dated May 2, 2002) affirming a decision entered by Coast Guard Administrative Law Judge Parlen L. McKenna on November 22, 1999, following a lengthy evidentiary hearing.¹ The law judge sustained a charge of negligence on an allegation that the appellant contributed to the grounding of a tank ship he was piloting under the authority of his Merchant Mariner's License (No. 713770). The Vice Commandant upheld the

¹Copies of the decisions of the Vice Commandant (acting by delegation) and the law judge are attached.

negligence finding, but modified the law judge's decision on sanction to provide for no more than a six-month outright suspension of appellant's license.² We will deny the appeal.³

The grounding at issue occurred in the vicinity of Avon Wharf in the Suisun Bay region of San Francisco Bay. Appellant, proceeding along the dredged ship channel maintained by the U.S. Army Corps of Engineers, was piloting the M/V CHESAPEAKE TRADER, a 658-foot long, 106-foot wide oil-laden tanker. The vessel grounded during a turn appellant had ordered to moor it port side to the wharf. Fixes (GPS and visual) taken by the master and chief mate at the time placed the vessel outside the channel in or adjacent to the Corps' dredge disposal area, a location the vessel should have avoided. Appellant later disputed that the vessel was in the disposal area and contended that it must have grounded on uncharted shoaling closer to the wharf. The site of the grounding is relevant because the Coast Guard's case was predicated on the admiralty law presumption of negligence that arises when a vessel grounds in a place in which it had no right to be.

We have reviewed the record in light of the numerous arguments raised in the appellant's appeal brief and find no basis for disturbing the Commandant's rejection of any of them.

²The law judge had ordered a sixteen-month license suspension, ten months outright and six months remitted on eighteen months' probation.

³Appellant's request for oral argument is denied. His one-hundred-page brief exhaustively explains his objections to the Coast Guard's rulings and decisions in this case, which, factually, is not especially complicated. The legal issues are

The Coast Guard did not file a reply. The Commandant's decision, like the thorough and well-reasoned decision of the law judge, fully explains the judgment that all of appellant's objections lack merit. With two exceptions, we see no reason to comment on the Coast Guard's resolution of the appellant's various disagreements with its findings and conclusions in this case.

Appellant maintains that the Coast Guard disregarded Board precedent holding that a presumption of negligence does not survive a showing of possibly exculpatory circumstances. See, e.g., Commandant v. Jahn, 3 N.T.S.B. 4493 (1981). He thus argues that his evidence of uncharted shoaling, *where he insists the grounding occurred*, should have dispelled any presumption that he had breached his duty of care. The argument has a false bottom. Because the law judge rejected, for a variety of reasons (including several credibility assessments), appellant's efforts to demonstrate that the grounding occurred at a location the vessel had a right to transit, his views as to the condition of the seabed in that area were irrelevant to reliance on the presumption. In fact, since the appellant did not question the application of the presumption of negligence where a grounding occurs at a location the vessel, through prudent seamanship, should have avoided, the law judge's acceptance of the evidence establishing that the grounding took place in the disposal area, a location at which the appellant does not contend his vessel had a right to be, perforce validated reliance on the presumption in this proceeding. Appellant made no effort to show that any

(..continued)
also reasonably straightforward.

circumstances existed that would have exonerated him from responsibility for his vessel's passage through the disposal area. He simply disputed that it had happened. The law judge disagreed, and we find no reason in appellant's brief to second-guess that judgment.

Appellant also maintains that there was insufficient water in the disposal area to float the vessel and, consequently, it could not have gotten into that area alongside of the dredged channel near the Avon Wharf. This argument is another attempted bootstrap. Apart from appellant's reliance on two-month-old soundings (and his failure to request that more contemporaneous soundings be taken), his reference only to the aft draft of the vessel, and the flawed, unstated premise that the existence of inadequate depths within the disposal area would also be present at its channel-side boundary, he ignores the negative corollary of his argument. That is, given the reliable, probative, and substantial evidence credited by the law judge as to the location of the grounding, appellant's essentially speculative belief that the vessel could not have entered the disposal area was properly accorded little weight.

ACCORDINGLY, IT IS ORDERED THAT:

1. The appellant's appeal is denied; and
2. The decision of the Vice Commandant affirming the decision and order of the law judge, with a modification to sanction, is affirmed.

ENGLEMAN CONNORS, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.